

# Liens

The following case history explains why consumers should know about liens:

Mr. Jones signed a contract with ABC contractors for the construction of an addition to his home. When the work was done, Jones paid the contracted price and started enjoying his new addition.

A month later, he received a "Notice of Intent to File Claim for Lien" in the mail from the lumberyard where ABC Contractors obtained building materials.

What happened? Although Jones had paid his bill, ABC Contractors did not pay the lumberyard. The law allows a subcontractor or material supplier to place a lien on the property where the work was done, if the contractor does not pay the bills. This can happen even if the homeowner has paid the contract in full.

## How liens work

Usually, having a lien recorded against your home means you

can not sell it until the debt is paid. A lien on a car in the possession of a repair shop means you will not be able to have your car back until the debt is paid.

Construction and Mechanics liens are remedies created by statute to ensure payment to contractors, subcontractors, tradesmen, laborers or material suppliers who have improved the property of others. Two of the most common types of liens are home improvement liens and motor vehicle repair liens. These liens provide home improvement contractors with a security interest in the homeowner's property, and auto repair shops with a security interest in the car owner's vehicle.

## Get lien waivers

Lien waivers are important for consumers because they prevent subcontractors and material suppliers from trying to collect money from homeowners who have already paid.

Prior to making a final payment on a home improvement contract, consumers need to get a lien

waiver from the prime contractor and lien waivers from each subcontractor and material supplier. If payment is made in installments, consumers should get lien waivers for the proportionate amount of the contract covered by each partial payment.

Getting lien waivers will prevent a subcontractor or material supplier from putting a lien on your home if the contractor doesn't pay the bills.

Wisconsin law requires that consumers receive a lien waiver from a contractor when they make partial or final payments on a home improvement contract. Consumers, however, should know in advance to ask for a lien waiver if one is not offered.

Lien waivers do not waive any contractual rights for the property owner or contractor.

## Notice of lien rights

Prime contractors for home improvements must provide written notice of lien rights to the

consumer with the written contract, or if no written contract, within 10 days of when the first work is done. If not, lien rights are waived.

Subcontractors for home improvements who do not directly contract with the homeowners must provide written notice of lien rights to the homeowner within 60 days of when the first work is done. For subcontractors, a late notice waives lien rights for work already performed, but not subsequent work.

Auto repair shops must also provide a notice of lien rights within 60 days of when the first work was performed on the car, or lien rights are waived.

### **Notice of lien claim**

Lien claims must be filed within 6 months of the last work performed on a home or vehicle or they are waived. All lien claimants must provide written notice to the home or car owners at least 30

days prior to filing a claim. The notice must describe the nature of the lien claim, amount owed, and a description of the property and the improvements it relates to. Failure to provide timely notice to the consumer will waive all lien claims.

Lien claimants have 2 years from the time the lien is filed to seek a court judgment to perfect the lien. If no judgment is entered within 2 years, homeowners may have the lien removed.

### **Unauthorized work**

Liens for unauthorized improvements are never enforceable, nor are liens enforceable if the contractor defaults or fails to perform under the terms of the contract. Auto repair shops may not refuse to return a car because the owner has refused to pay for unauthorized repairs or repair charges that exceed the shop's repair estimate.

### **Slander of title**

It is against the law for any person to record or file a lien against real or personal property knowing some or all of its contents to be false or frivolous, and is liable to any owner of the impaired property for punitive damages of \$1000 plus any actual damages caused.

### **Protect Yourself**

For more information, or to file a complaint, contact the Bureau of Consumer Protection at:

**(800) 422-7128**

**FAX: (608) 224-4939**

**TTY: (608) 224-5058**

**E-MAIL:**

**[datcp hotline@datcp.state.wi.us](mailto:datcp hotline@datcp.state.wi.us)**

**WEBSITE:**

**<http://datcp.state.wi.us/>**

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